IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1221 of 2003

to

FIRST APPEAL No 1228 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF DECD.ATMARAM GOPALDASPATEL

Versus

SP.LAND ACQUISITION OFFICER

Appearance:

1. First Appeal No. 1221 of 2003

MR BHARAT G PATEL for Petitioner No. 1-1/4

MR KT DAVE, AGP for Respondents.

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS

and

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 16/10/2003

ORAL COMMON JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

1. This group of eight First Appeals is filed by the original claimants whose lands have been acquired for a public purpose, namely for the construction of Narmada Main Canal. Since these appeals involve common question of law and facts, they are heard together and now they are being disposed of by this common judgment.

2. The lands in question are agricultural lands and they are situated in village Karannagar, Taluka Kadi, District Mehsana. The notification u/S. 4 of the Land Acquisition Act, 1894 ('the Act' for short) was published on 10/8/1990 followed by the notification u/S. 6 of the Act published on 26th August, 1992. The award was made on 3rd August, 1993. The Land Acquisition Officer awarded Rs.3-90 ps. per sq. mtr. by way of compensation as against the claim of Rs.100/= per sq. mtr. made by the claimants. The claimants resorted to the provisions of section 18 of the Act for filing reference cases since they found that the award made by the Land Acquisition Officer was hopelessly inadequate. The Reference Court, after considering the entire material placed before it in the form of documentary as well as oral evidence, came to the conclusion that considering various relevant factors the price of the land could be determined at Rs.40-60 ps. per sq. mtr. The Reference Court, therefore, passed award in the respective reference cases vide judgment dated 19th February, 2000.

2.1. The present First Appeals have been filed u/S. 54 of the Act read with section 96 of the Code of Civil Procedure seeking increase in the compensation awarded by the Reference Court. The increase that has been sought is @ Rs.2/= per sq. mtr.

2.2. It may be stated here that in relation to the present acquisition, but in respect of the different lands of this very village, the State of Gujarat had approached this Court by filing First Appeals against the present judgment and award since those cases were tried alongwith the present reference cases. In short, the cognate matters of these appeals i.e. First Appeal Nos. 682 of 2000 to 694 of 2000 and their allied matters were

already heard and decided by the Division Bench, to which one of us was a party [Akshay H. Mehta, J.], vide judgment dated 14/9/2001. In the earlier First Appeals which were preferred by the State of Gujarat, this Court after considering the relevant evidence including earlier awards, came to the conclusion that the amount of compensation awarded by the Reference Court was just and proper and no interference was called for. The said appeals of the State were dismissed, thus upholding the market price of the concerned land determined by the Reference Court.

2.3. In the instant case the Reference Court has come to the conclusion that the claimants i.e. the present appellants would be entitled to receive a sum of Rs.40-60 ps. per sq. mtr. as market price of their lands i.e. an additional amount of Rs.36-70 ps. per sq. mtr. together with the benefits permissible to them under the provisions of section 23 (2) and 23 (1-A) of the Act. However, the Reference Court denied payment of interest on these statutory benefits.

3. The appellants have, therefore, approached this Court seeking increase of the market price determined by the Reference Court by Rs.2/= and also have prayed for grant of interest on the statutory benefits.

4. We have heard Mr. J.M. Patel, learned advocate for the appellants and Mr. K.T. Dave, Ld. AGP for the respondents. Mr. Patel has submitted that considering the previous judgments of this Court in respect of acquisition proceedings of this very project for this very land, this Court has determined the market price at Rs.42/= per sq. mtr. and, therefore, the Reference Court ought to have awarded compensation to the appellants @ Rs.42/= per sq. mtr. According to Mr. Patel, the Reference Court has committed error in not awarding interest of the statutory benefits in view of the recent decision of the Apex Court rendered in the case Sunder v/s. Union of India reported in 2001 (3) G.L.H. p. 446.

4.1. As against that, Mr. K.T. Dave, Ld. AGP has submitted that the reasons assigned by the Reference Court for determining the market price of Rs.40-60 ps. per sq. mtr. is absolutely just and proper and no interference by this Court is called for.

5. We have carefully considered the rival submissions as well as the evidence on record. We have

also carefully gone through the judgments of this Court in respect of the earlier acquisitions for this very project. So far the First Appeals Nos. 682 of 2000 and allied matters, which have been disposed of by the Division Bench of this Court vide judgment dated 14/9/2001 are concerned, these appeals have been filed by the State of Gujarat challenging the determination of market price of the land under acquisition in those cases at Rs.40-60 ps. per sq. mtr. In some of the appeals original claimants of those cases, had filed Cross Objections. The Division Bench dismissed the appeals of the State Government and allowed the Cross Objections holding that the correct market value of the lands under acquisition in those cases would be Rs.42/= per sq. mtr. While determining the market price this Court has elaborately discussed the various factors relevant for the determination of the market price. We have no reason to differ with those factors which have been considered by the earlier Division Bench in respect of the land situated at this very village i.e. Karannagar for the project of construction of Narmada Main Canal. In other words, we are in total agreement with the conclusion reached by the Division Bench of this Court in respect of the correct market value of the lands in question. We, therefore, hold that the market price determined by the Reference Court at Rs.40-60 ps. per sq. mtr. is required to be enhanced by Rs.1-40 ps. per sq. mtr. The appellants have restricted their claim in these appeals at Rs.2/= per sq. mtr. However, the same cannot be granted in view of the earlier decision of this Court. We, therefore, hold that the appellants/claimants will be entitled to receive inall Rs.42/= per sq. mtr. by way of compensation for the acquisition of their lands.

5.1. Para. 3 of the operative portion of the judgment of the Reference Court clearly indicates that it has denied the payment of interest on the award of additional amount payable u/S. 23 (1-A) and 23(2) of the Act. This decision is erroneous in view of the judgment rendered by the Supreme Court in the case of Sunder v. Union of India (supra). The Apex Court has held in that decision that expression "awarded amount" means all the amount of compensation worked out u/S. 23 of the Act. It has clarified the position further by saying that -

> "We make it clear that the compensation awarded include not only the total sum arrived at as per subsection (1) of S. 23 but the remaining sub-sections thereof as well. It is thus clear from S. 34 that the expression "awarded amount" would mean the amount of compensation worked out

in accordance with the provisions contained in S.23 including all the sub-sections thereof."

Thus, the appellants are entitled to receive interest on the additional amount which is payable to them by way of statutory benefits u/S. 23 (1-A) and 23(2) of the Act 9% p.a. for the first year and @ 15% p.a. for the subsequent years i.e. till the deposit is made by the respondents.

6. In view of the aforesaid discussion, all these appeals are partly allowed with no order as to costs.

Copy of this judgment to be maintained on the file of other appeals also.

[KSHITIJ R. VYAS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.